

**TO WHAT EXTENT DO INTERNATIONAL ACTORS  
HAVE A DUTY TO COOPERATE FOR THE  
PROTECTION OF ECONOMIC AND SOCIAL RIGHTS?  
THE CASE OF HAITI**



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Deadline for submission: 30/08/2012

Number of words: 17,937

26.08.2012



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## 1 Introduction

In general terms, International Human Rights Law (IHRL) regulates the relationships between the States and individuals considered to be under their jurisdiction.<sup>1</sup> This means that the individual is protected from arbitrary or excessive interference by the State and at the same time he or she is granted certain rights that require the positive action by the State.<sup>2</sup> In practice, not all these relationships work, and the human dignity of individuals living in certain States have been gravely affected due to particular domestic situations.

In this regard, despite the international support received by Haiti, there is still a lack of progress regarding the protection of human rights in the country.<sup>3</sup> There are domestic aspects that help to explain this, such as the fact that policies have been difficult to implement due to the lack of institutional capacity.<sup>4</sup> Other reasons are linked to the interaction of the different actors involved in the reconstruction programmes, such as the strategy, planning and coordination between donors and the Haitian government have been weak, that the reconstruction process has focused on providing temporary solutions to more immediate needs and that the disbursements of funds by donors have been provided too slowly.<sup>5</sup>

Despite this variety of reasons, there is an international consensus that the inclusion of human rights as a policy tool for development has also coincided with an increase of jurisprudence of economic and social rights.<sup>6</sup> Nevertheless, the different human rights treaties differ in their formulations regarding scope of application. By contrast to the International Covenant on Civil and Political Rights (ICCPR), the International

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<sup>1</sup> De Schutter (2010) p.11

<sup>2</sup> International Protection of Human Rights: A Textbook (2009) p.22. Several General Comments of the HRC and the CESCR refer to the positive and negative dimensions of the rights contain in the Covenants.

<sup>3</sup> MINUSTAH United Nations Stabilization Mission in Haiti; A/HRC/17/42 p.4

<sup>4</sup> Peacebuilding Support Office (2010) p.16

<sup>5</sup> United States Institute of Peace (2010) p.1; The United Nations Office of the Special Envoy for Haiti (2012) press release

<sup>6</sup> Steiner, Alston and Goodman (2007) p.1434

Covenant on Economic, Social and Cultural Rights (ICESCR) does not contain territorial or jurisdictional limitation.<sup>7</sup> As a consequence, a lack of precision has generated debates about the level of extraterritorial responsibility that the ICESCR implies.<sup>8</sup>

In any case, based on the example of Haiti, this thesis will explore whether there are any legal obligations for developed States to protect economic and social rights in situations of peace building and reconstruction of third countries.<sup>9</sup> More specifically, the thesis will pose the following research questions: a) to what extent does the current legal and institutional framework of Haiti protect the economic and social rights of its people? b) If a State is not capable of offering domestic protection, are State actors legally bound to cooperate in the protection of economic and social rights? c) And last, to what extent has there been an inclusion of human rights within the reconstruction and peace building programme in Haiti? Posing such questions helps to develop strategic recommendations to the international community with the aim of improving the response to the human rights challenges of a country in process of reconstruction.

### 1.1 Scope of application

Generally speaking, IHRL focuses mainly on the vertical relationship between the State and the subjects of the State, rather than on a horizontal relationship between and among States.<sup>10</sup> In this context, to understand the legal implications of the cooperation with third countries, it is important to provide an overview of the four aspects that determine the general applicability of IHRL:

First, the subject matter of applicability, or material scope of applicability, also known as *ratione materiae*, refers to the definition of the situation where IHRL applies.<sup>11</sup>

IHRL is concerned with the regulation of the exercise of a State's power over individuals, and whether the facts alleged to have happened violate the provisions of

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<sup>7</sup> Universal Human Rights and extraterritorial obligations (2010) p.112

<sup>8</sup> De Schutter (2010) p.123-124

<sup>9</sup> According to Sepulveda (2009) p.89, developed states are understood as those States which are in a position to assist and cooperate with others.

<sup>10</sup> Universal Human Rights and Extraterritorial Obligations (2010) p.1-2

<sup>11</sup> ECHR (2011) p.44

IHRL, such as civil and political as well as economic, social and cultural rights treaties.<sup>12</sup>

Second, the personal scope of the applicability, also known as *ratione personae*, defines the actors who will be subjected to IHRL rules.<sup>13</sup> From a positivist point of view, international law is only binding upon States. Nevertheless, IHRL involves States having obligations towards third-party beneficiaries, who do not have the capacity to sign treaties and who are not recognised as subjects of public international law.<sup>14</sup>

Third, the temporal scope of applicability, known as *ratione temporis*, which defines that IHRL applies at all times.<sup>15</sup> However, a State is allowed to derogate from certain rights in circumstances of public emergency.<sup>16</sup>

Fourth, the spatial scope of applicability, known as *ratione loci*, addresses questions of the applicability of IHRL in terms of space, such as if the State is bound to secure rights to everyone within its territory and/or under its responsibility.<sup>17</sup> This scope of applicability is being challenged, since the various human rights treaties differ in their formulations in regards to the requirements of jurisdiction or of territory and therefore there are no universal standards.<sup>18</sup>

Indeed, while the ICESCR contains no provisions on jurisdiction, competence, or territory, the CESCR has defined ICESCR obligations based on the concept of State jurisdiction. The ICCPR applies to ‘all individuals within [a State’s] territory and subject to its jurisdiction’ and the Convention on the Rights of the Child (CRC) applies to ‘each child within [a State’s] jurisdiction’.<sup>19</sup> Although the Convention on the Elimination of Discrimination against Women (CEDAW) does not contain provisions regarding the scope of application of the Convention, the Committee has mentioned that

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<sup>12</sup> Condé (2004) p.217

<sup>13</sup> ECHR (2011) p.34

<sup>14</sup> International Protection of Human Rights: A Textbook (2009) p.19

<sup>15</sup> ECHR (2011) p.38-44

<sup>16</sup> ICCPR art 4(1)

<sup>17</sup> ECHR (2011) p.38

<sup>18</sup> De Schutter (2010) p.123

<sup>19</sup> ICCPR art 2 (1); CRC art 2 (1)

CEDAW is interpreted as applying to all women ‘within the jurisdiction’ of a State.<sup>20</sup> The Convention on the Rights of Persons with Disabilities (CRPD) lacks any territorial or jurisdictional provision, but its complaint mechanism referred in its OP is limited to individuals subject to the jurisdiction of a State Party.<sup>21</sup>

In this context, according to the International Law Commission (ILC), at the domestic level, the applicability of IHRL can be relaxed beyond the traditional concept of national territory to a certain extent due to “...*force majeure* events, that is the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation...”<sup>22</sup>

Regarding the lack of spatial provisions of the ICESCR, the ICJ referred in an Advisory Opinion that “this may be explicable by the fact that this Covenant guarantees rights which are essentially territorial. However, it is not to be excluded that it applies both to territories over which a State party has sovereignty and to those over which that State exercises territorial jurisdiction.”<sup>23</sup> Nevertheless, according to Olivier De Schutter, the assertion by the ICJ that the jurisdiction is essentially territorial, “is made without any justification grounded either on the text of the Covenant or on its *travaux préparatoires*”.<sup>24</sup> On the contrary, he argues that the lack of definition could imply that the ICESCR obligations apply irrespective of the place where the alleged violation takes place.<sup>25</sup>

De Schutter further refers that there are three scenarios representing situations in which States may be under obligations to comply with extraterritorial human rights obligations: first, a State exercises executive powers outside its borders by sending States agents abroad, regardless of the consent given by the territorially sovereign

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<sup>20</sup> CEDAW General Comment 28 para 39

<sup>21</sup> OP to CRPD art 1

<sup>22</sup> ILC Draft Articles on State Responsibility art. 23; De Schutter (2010) p.125

<sup>23</sup> Wall, ICJ (2004) para.112

<sup>24</sup> De Schutter (2010) p.124

<sup>25</sup> Ibid



State.<sup>26</sup> Second, a State may be able to influence situations located outside its national territory by prescriptive and adjudicative extra-territorial jurisdiction, for instance by adopting extraterritorial legislation or by empowering its courts to hear claims related to extra-territorial jurisdiction.<sup>27</sup> Third, and most relevant for this thesis, when one State is asked to assist another State, or through the efforts of the international community, is required to help to improve the human rights situation of a third country characterised by a lack of resources.<sup>28</sup>

Regarding the tripartite typology of obligations of IHRL (to respect, protect, and fulfil), this thesis will focus on the obligation to fulfil, defined in the extra-territorial context as a “positive obligation to support foreign countries in the quest to implement human rights within their own domestic setting through measures, such as development assistance that is human rights conducive, or assistance to develop a human rights infrastructure (functioning judiciary, anti-corruption measures, and so forth).”<sup>29</sup> This obligation is also divided into three sub-categories: (a) the obligation to facilitate, (b) the obligation to provide, and (c) the obligation to promote, which refer to activities that a State Party should undertake to fulfill the Covenant rights in another country.<sup>30</sup>

## 1.2 Methodology and limitations

Based on Article 31 of the VCLT and Article 38 of the ICJ statute, this thesis will analyse the different sources concerning the legal obligations of the States to cooperate for the protection of economic and social rights in third countries. In this connection, the core international human rights treaties, such as the UN charter, Universal Declaration on Human Rights (UDHR), ICESCR, ICCPR, CEDAW, CRC and CRPD will be explored, as well as some of the jurisprudence created by different organs and the opinion of relevant experts.

The legal school on which this thesis is based is the New Haven School, which describes itself as a policy-oriented perspective, viewing international law as a social

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<sup>26</sup> Ibid p.142-162

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Universal Human Rights and extraterritorial obligations (2010) p.6

<sup>30</sup> Sepulveda (2009) p.92

process of decision making by various actors, rather than “a set of sovereign commands or a reflection of the unitary interests of nation-states.”<sup>31</sup> Moreover, it has several intellectual commitments: first, it is inter-disciplinary, thus it can combine law and political science.<sup>32</sup> Second, contrary to positivism, which sees international law as a body of rules made by the legislature, the law-making process is seen as comprising several communicative layers (i.e. communications between elites, politically relevant groups).<sup>33</sup> Third, by treating international law as more than just a body of rules, the law is seen only as a means to an end and not an end in itself.<sup>34</sup> Fourth, because of its conviction that international law rules are intended to reflect the needs of international policy arguments, it connects law and policy.<sup>35</sup> Fifth, based on the interpretation of multiple decisional entities (i.e. public and private law), it recognises the importance of transnational law.<sup>36</sup>

A "new" New Haven School emerged, adding new commitments: it adopts interdisciplinary empirical approaches to the study of international law not only from political science, but also from other social science disciplines and qualitative empirical studies.<sup>37</sup> It also connects law and policy through practice and public service.<sup>38</sup> Moreover, it adopts a practice-oriented study of the norms and processes of international law in action on the ground, so it focuses on micro-analyses and on the conduct of international law advocacy work in local settings.<sup>39</sup> In this regard, while the original New Haven School is oriented toward world public order and human dignity, the “new” New Haven School is committed to the rule of law, accountability, and human rights.<sup>40</sup>

Furthermore, the "new" New Haven School continues the focus on transnational legal process, based on the idea of legal pluralism; the recognition that international norms

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<sup>31</sup> Berman (2007) p.306

<sup>32</sup> Koh (2007) p.563-564

<sup>33</sup> Ibid

<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Dickinson (2007) p.550-551

<sup>38</sup> Koh (2007) p.565

<sup>39</sup> Dickinson(2007) p.550

<sup>40</sup> Ibid p.549

often infiltrate domestic law through processes of norm-internalisation; the recognition that law-making sometimes occurs through bottom-up private/public processes; an increasing need to attach public law duties to private actors, particularly since international activities are increasingly being carried on by Non-State actors; and the recognition of the legal interactions in the law-making process (i.e. relationships between domestic courts, international tribunals, Non-State actors).<sup>41</sup>

This legal school of thought was chosen since it examines the degree of approximation between the law and the outcomes of their process of implementation and the problems to ensure a public order.<sup>42</sup> Moreover, since it analyses the relationship between unrealistic prescriptions which cannot be implemented and which further erode community expectations, this method focuses on possible improvements in law structures and procedures.<sup>43</sup> In this regard, it focuses on not only what the future might bring, but also how the future is likely to approximate a public order of human dignity.<sup>44</sup>

Haiti was chosen as a case study due to its current challenges to protect human rights in a context where national capacity is pretty much lacking in many spheres and due to the relevance of international support received during a long-term period of time. Given the variety of economic and social rights, this thesis will focus solely on the right to the highest attainable standard of health (hereinafter right to health), right to education and right to adequate housing.

### 1.3 Structure of Thesis

In order to understand the legal obligations of States to cooperate on the protection of economic and social rights in third countries, the second chapter will provide an overview of economic and social rights and of the Human Rights-Based Approach (HRBA).

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<sup>41</sup> Dickinson(2007) p.549; Koh (2007) p.565-571

<sup>42</sup> McDougal and Reisman (1981) p.275-284

<sup>43</sup> Ibid p.254-255

<sup>44</sup> Wiessner and Willard (1999) p.332

The third chapter will analyse the protection of human rights in Haiti. For this purpose a historical background, an overview of the situation of vulnerable groups as well as a description of Haiti's national legal and institutional framework will be provided.

The fourth chapter will analyse the legal obligations of State actors to cooperate for the protection of economic and social rights in the context of reconstruction and peace building of a third State. This chapter will also provide an overview of the critics to the reconstruction programme in Haiti. It will conclude with general challenges for the implementation of economic and social rights.

The last chapter will provide some concluding remarks and recommendations for the consideration of international actors.

## 2 General Background

This chapter intends to provide an overview of economic and social rights and how, particularly the right to health, right to education, and right to adequate housing are enshrined in different human rights treaties. Moreover, it will study how the HRBA has become an international tool for the protection of human rights.

### 2.1 Economic and Social rights

The ICESCR, which is the core instrument for the protection of economic and social rights, refers in its Article 2, that “each State Party...undertakes to take steps, individually and *through international assistance and co-operation*, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights...” Although there are variances on the conception and implementation of these rights, each of them contain claims relating to *accessibility* (e.g. security of tenure, physical accessibility, affordability and appropriate location in the case of housing); *availability* of either the subject of the right (e.g. food, education) or the requisite facilities or systems (e.g. schools, social security system); and some level of *adequacy, quality or cultural appropriateness* (e.g. the safety of the water, the cultural dimensions of education).<sup>45</sup>

The State also has an obligation to Respect, which means a duty to abstain from interference with human rights; an obligation to Protect, in order to ensure that third parties, such as enterprises or individuals do not deprive individuals of their access to a particular right; and obligations to Fulfil.<sup>46</sup> This has been the most controversial, since it demands an active role of the State in terms of legislation, administrative, judicial,

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<sup>45</sup> Social Rights Jurisprudence: emerging trends in International and Comparative Law (2008) p.13

<sup>46</sup> International Protection of Human Rights: A textbook (2009) p.133

budgetary measures, i.e. courts being involved in questions concerning the fulfilment of social rights.<sup>47</sup>

### 2.1.1 Right to health

The right to health is recognised in the UDHR, ICESCR, ICERD, CEDAW, CRC and CRPD. More specifically, Article 12(1) of the ICESCR refers that States Parties “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Moreover, Article 12(2) enumerates a number of steps to be taken to achieve the full realisation of this right, i.e. the creation of conditions to assure all medical service and medical attention in the event of sickness. This article, according to the CESCR, provides the most comprehensive article on the right to health in IHRL.<sup>48</sup>

In this regard, according to the CESCR, the right to health is defined as an inclusive right, extending not only to health care, but also to the determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, i.e. on sexual and reproductive health.<sup>49</sup> This means that instead of being a right to be healthy, it is a right to the enjoyment of a variety of facilities, goods, services, and conditions.<sup>50</sup>

The CESCR also refers that “States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care.”<sup>51</sup> Read in conjunction with other instruments, such as the Programme of Action of the International Conference on Population and Development and the Alma-Ata

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<sup>47</sup> Ibid; Social Rights Jurisprudence: emerging trends in International and Comparative Law (2008) p.13-21

<sup>48</sup> CESCR General Comment No. 14 para 2

<sup>49</sup> Ibid para 11

<sup>50</sup> Universal Human Rights and extraterritorial obligations (2010) p.114

<sup>51</sup> CESCR General Comment No. 14 para 43

Declaration, they provide compelling guidance on the core obligations refer in article 12.<sup>52</sup>

Moreover, these core obligations include at least the following obligations: (a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis; (b) To ensure freedom from hunger; (c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water; (d) To provide essential drugs; (e) To ensure equitable distribution of all health facilities, goods and services; (f) To adopt and implement a national public health strategy and plan of action on the basis of a transparent process.<sup>53</sup> The Committee also attaches importance to the participation of the population in all health-related decision-making at the community, national and international levels.<sup>54</sup>

The UDHR in its Article 25(1) refers that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including medical care. CERD also guarantees in Article 5(e) (iv) “the right to public health, medical care, social security and social services”, and through Article 25 of the CRPD, States Parties recognise that persons with disabilities have the right to the enjoyment of “the attainable standard of health without discrimination on the basis of disability.”

Article 12 of CEDAW refers to the application of measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services. Furthermore, it adds that States shall ensure appropriate services in connection with pregnancy, confinement and the post-natal period. Finally, in Article 11(1) (f), States recognise the right to protection of health and to safety in working conditions.

The CRC also highlights in its Article 3 that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the area of health. Furthermore,

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<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Ibid para 11

Article 24(1) recognises the children's right to health and to facilities for the treatment of illness and rehabilitation of health.

According to the CESCR, the right to health is related to and dependent upon the realisation of other human rights, including “the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement.”<sup>55</sup> This indivisibility is also reaffirmed in other human rights instruments, such as CEDAW, which mentions in its Article 10(h) that in regards to the right to education, States should ensure information and advice on family planning. Moreover, Article 8 of the Declaration of the Right to Development establishes that the right to development is a right to a process of development in which all human rights, including the right to health, can be fully realised.

### 2.1.2 Right to education

Article 13 of the ICESCR recognises the right of everyone to education. This article, which is based on Article 26 of the UDHR, further refers that “education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.”

In terms of securing the progressive implementation of the right to compulsory primary education, free of charge, the CESCR recognises that unlike the provision in Article 2(1), Article 14 specifies that the target date must be within a reasonable number of years and moreover, that the time-frame must be fixed in the plan, which underscores the importance and the relative inflexibility of the obligation.<sup>56</sup>

CEDAW in its Article 10 refers that States Parties shall take appropriate measures to ensure to women equal rights with men in the field of education, i.e. same conditions for career and vocational guidance; for access to studies; elimination of any stereotyped concept of the roles of men and women; the reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school

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<sup>55</sup> Ibid para 3

<sup>56</sup> CESCR General Comment No.11 para 10



prematurely. Furthermore, its Article 14(2) (d) pays particular attention to the situation of rural women and their right to obtain all types of training and education, formal and non-formal.

Article 28(1) of the CRC recognises the right of the child to education and with a view to achieving this right progressively, the State should take concrete measures, i.e. making primary education compulsory and freely available to all. CERD also guarantees in Article 5(e) the right to education and training and CRPD refers in its Article 24 that States Parties recognise the right to education of persons with disabilities.

### 2.1.3 Right to adequate housing

Article 11(1) of the ICESCR recognises the right of everyone to housing as an adequate standard of living. According to the CESCR, this right must be read as referring not just to housing but to adequate housing.<sup>57</sup> Moreover, it should not be interpreted in a narrow or restrictive sense, such as for instance solely having a roof, on the contrary, “it should be seen as the right to live somewhere in security, peace and dignity.”<sup>58</sup> The CESCR also reaffirms that the broad scope of the right to housing is further supported by the idea of indivisibility of rights since “the right to housing is integrally linked to other human rights...”<sup>59</sup>

The CESCR further refers to adequate housing conditions, such as a) legal security of tenure; b) availability of services, materials, facilities and infrastructure, such as health, security, comfort and nutrition facilities; c) affordability since the costs associated with housing should not threaten the fulfilment of other basic needs; d) habitability, in terms of adequate space and protecting inhabitants from cold, damp, heat, rain, wind or other threats to health; e) accessibility, for instance to disadvantaged groups; f) a location which allows access to employment options, health-care services, schools; g) and

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<sup>57</sup> CESCR General Comment No. 4 para 7

<sup>58</sup> Ibid

<sup>59</sup> Ibid

cultural adequacy, which means that the cultural dimensions of housing are not sacrificed and that modern technological facilities are also ensured.<sup>60</sup>

Less detail-oriented, Article 25 of the UDHR refers that everyone has the right to a standard of living adequate for their health and well-being, including housing, and CERD also guarantees this right in Article 5(e) (iii). Article 27(3) of the CRC refers that “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to...housing.”

CEDAW in its Article 14(2) (h) pays particular attention to the situation of rural women and emphasises that States Parties shall ensure their right to enjoy adequate living conditions, particularly in relation to housing. Article 16 further refers to the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.

In Article 28(1) of the CRPD, State Parties recognise the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate housing, and that States shall take appropriate steps to protect and promote the realisation of this right. Furthermore, Article 28(2) (d) highlights that the State Parties shall take appropriate steps to ensure access by persons with disabilities to public housing programmes. Article 9(1) (a) further refers that State Parties shall take appropriate measures to identify and eliminate obstacles and barriers to accessibility to persons with disabilities, including in regards to housing. Finally, Article 12(5) refers to their equal right to own or inherit property and that they are not arbitrarily deprived of their property.

Regarding evictions, the CESCR has referred that “forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of

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<sup>60</sup> Ibid para 8

international law.”<sup>61</sup> Moreover, justification must be given and a range of procedures must be followed, including due process and consultation, and provision of alternatives to a level compatible with the State’s resources.<sup>62</sup>

## 2.2 Human Rights-Based Approach (HRBA) as a cross-cutting policy tool

Up until the early 1990’s, there was limited contact between the development and the human rights communities.<sup>63</sup> Those working on development focused primarily on social and economic development, while those working with human rights, worked on strengthening international human rights norms and institutions, and protecting mainly civil and political rights.<sup>64</sup>

Consequently, the concept of the HRBA emerged within the field of development, with the recognition that development projects that failed to explicitly incorporate human rights could be counterproductive to the fulfilment of rights.<sup>65</sup> In this connection, human rights principles started guiding all phases of the programming of the international community’s development process, including assessment and analysis; programme planning and design; implementation, monitoring and evaluation.<sup>66</sup> This change of perspective meant that while a need not fulfilled leads to dissatisfaction, a right that is not respected leads to a violation, and therefore its redress or reparation can be legally and legitimately claimed.<sup>67</sup>

### 2.2.1 Principles of a HRBA

A HRBA is a “conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.”<sup>68</sup> In this sense, human rights and achieving its

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<sup>61</sup> CESCR General Comment No. 4 para 18

<sup>62</sup> Ibid para 8, 17

<sup>63</sup> Reinventing Development? Translating Rights-based Approaches from theory into practice (2005) p.47

<sup>64</sup> Ibid

<sup>65</sup> Klasing, Moses and Satterthwaite (2011) p.10

<sup>66</sup> CRC General Comment No. 13 para 72(a); Reinventing Development? Translating Rights-based Approaches from theory into practice (2005) p.50-51

<sup>67</sup> UNFPA. Human Rights. The Human Rights Based Approach.

<sup>68</sup> OHCHR (2006) Frequently asked Question on a Human Rights-Based Approach to Development Cooperation p.15

compliance is an objective and platform of any policy.<sup>69</sup> Its aim is to analyse inequalities which lie at the heart of development problems and redress discriminatory practices that impede development progress.<sup>70</sup> More precisely, it is based on the following principles:

A HRBA fosters the rule of law and accountability of all the actors, which must be reflected in the outcome of policies since they have to comply with human rights obligations.<sup>71</sup> In this regard, accountability derives from the duties and obligations of States that are required to take steps, such as through legislation, policies and programmes, and which should aim to respect, protect, promote and fulfil the human rights of all people within their jurisdiction.<sup>72</sup> Transparency policies should also guarantee the trust of the people towards the government, creating an environment that fosters positive attitudes towards the administration of resources.<sup>73</sup>

A HRBA also points out that governments cannot only focus on growth indicators, but on their people, particularly in helping those who are most in need. Therefore it identifies groups lacking effective rights in order to highlight the root causes of poverty and vulnerability.<sup>74</sup> In this regard, policies implemented in times of poverty should promote the participation and the protection of the people more affected by hardship, such as women, children, people with disabilities and elderly.<sup>75</sup>

Empowering people is another key feature of a HRBA and it entails to let them know their rights as claim-holders in order to strengthen their power in relation to the duty-bearers.<sup>76</sup> It is also about having the capacity to know how to guarantee the well-being,

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<sup>69</sup> Steiner, Alston and Goodman (2007) p.1434

<sup>70</sup> OHCHR (2006) Frequently asked Question on a Human Rights-Based Approach to Development Cooperation p.15

<sup>71</sup> Reinventing Development? Translating Rights-based Approaches from theory into practice (2005) p.49

<sup>72</sup> UNDP (1998) The Application of a Human Rights-Based Approach to Development Programming: What is the Added Value? p.9

<sup>73</sup> Ibid

<sup>74</sup> Development as a Human Right: Legal, Political and Economic Dimensions (2010) p.17

<sup>75</sup> UNDP (2003) Human Rights-Based Reviews of UNDP Programmes Working Guidelines p.6

<sup>76</sup> Commission on the legal empowerment of the poor (2008) p.26

recognising people as key actors in their own development, allowing local ownership and reducing inequalities.<sup>77</sup>

A HRBA also promotes indivisibility of rights since no human right is inferior to another and no right can be allowed to decline in its level of realisation (non-retrogression of rights).<sup>78</sup>

## 2.2.2 Relevance of the HRBA in the international context

The recognition of interdependence among the rights prepared the way for future cooperation by international actors in the promotion of all human rights.<sup>79</sup> In this connection, the international community has been incorporating HRBA into all aspects of its development cooperation and response to conflicts, from preventive action to humanitarian assistance.<sup>80</sup> For instance, all agencies of the United Nations (UN) were called to include human rights into their activities, mandates and development cooperation programmes, signing in 2003, a Common Understanding on a HRBA.<sup>81</sup>

### 2.2.2.1 HRBA in humanitarian operations and assistance

Though humanitarian operations and assistance are not traditionally considered a human rights function, “the provision of food, medical care and basic education is a direct and tangible means of supporting the human dignity of the affected population.”<sup>82</sup> In this regard, a HRBA helps to set human rights parameters for the delivery of humanitarian assistance, for instance by ensuring the non-discriminatory treatment of those in need, and paying particular attention to vulnerable groups.

Furthermore, through urging national authorities to respect international human rights standards, humanitarian operations and assistance efforts aim to provide the human rights framework necessary to find long-term solutions to the root causes of conflict and

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<sup>77</sup> Reinventing Development? Translating Rights-based Approaches from theory into practice (2005) p.48

<sup>78</sup> Development as a Human Right: Legal, Political and Economic Dimensions (2010) p.335

<sup>79</sup> De Schutter (2010) p.180

<sup>80</sup> United Nations. A United Nations Priority.

<sup>81</sup> Human Rights in UNDP: Practice Note (2005)

<sup>82</sup> United Nations. A United Nations Priority.

to foster the process of reconciliation.<sup>83</sup> Indeed, since human rights forge vital links between peace, democracy and development, a HRBA facilitates a successful transition between peacekeeping operations and humanitarian emergency assistance to long-term peace building and sustainable development, particularly since societies that are emerging from conflicts have particular needs in the area of human rights and economic development.<sup>84</sup>

#### 2.2.2.2 HRBA in peace building operations

In the Brahimi Report, peace building is defined as those “activities undertaken... to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war.”<sup>85</sup> Their operations include “... improving respect for human rights through the monitoring, education and investigation of past and existing abuses; providing technical assistance for democratic development (including electoral assistance and support for free media); and promoting conflict resolution and reconciliation techniques.”<sup>86</sup> Thus based on a HRBA, a peace building operation should focus on strengthening development and democratic institutions and securing universal respect for human rights.<sup>87</sup>

The role of the international community in a peace building operation is to reduce “the risk of lapse or relapse into conflict and to support the restoration or renewal of a social contract, and the return of stability, through supporting national capacities...”<sup>88</sup> More specifically, the Security Council has recognised that in terms of peace building “...actions should focus on fostering sustainable development, the eradication of poverty and inequalities, transparent and accountable governance, the promotion of democracy, respect for human rights and the rule of law and the promotion of a culture of peace and non-violence.”<sup>89</sup> Indeed, since there is a connection between democratic practices (i.e. rule of law and transparency in decision-making) and the achievement of

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<sup>83</sup> Ibid

<sup>84</sup> Peacebuilding Support Office. UN Peacebuilding: an Orientation p.1

<sup>85</sup> Ibid p.48

<sup>86</sup> Ibid

<sup>87</sup> Ibid

<sup>88</sup> OCHA. Occasional Policy Briefing Series, Brief No. 7 (2011) p.3

<sup>89</sup> Peacebuilding Support Office. UN Peacebuilding: an Orientation p.48

true peace and security in any political order, these elements of good governance should be promoted at all levels of international and national political communities.<sup>90</sup>

Peace building based on a HRBA also recognises that a long-term and sustainable peace can only be built by national actors, including central and local governments, civil society, the private sector and individual citizens.<sup>91</sup> A HRBA also has a crucial role in establishing the parameters within which democratic societies can reach reconciliation, since the respect for human rights through development helps to re-establish a climate of understanding.<sup>92</sup>

### 2.2.2.3 HRBA in the development cooperation

According to Rajeev Malhotra, a HRBA to development calls for a development process based on explicit linkages with international human rights instruments, including universality and indivisibility of human rights; emphasis on participation and inclusion; empowerment of people; non-discrimination and a process promoting equality; accountability and the rule of law; recognition that while some human rights can be only realised progressively, others need to be protected from denial, non-retrogression, and violations; and recourse to redress.<sup>93</sup>

Nowadays, State actors started applying a HRBA into their development cooperation activities. For instance, several major donor countries, including Norway, Sweden, UK, Canada, Denmark, The Netherlands showed a willingness to support with resources those countries that adopt a HRBA to development (i.e. ensuring accountability).<sup>94</sup>

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<sup>90</sup> An Agenda for Peace, Report of the Secretary-General (1992) para 59

<sup>91</sup> OCHA. Occasional Policy Briefing Series, Brief No. 7 (2011) p.4

<sup>92</sup> Peacebuilding Support Office. UN Peacebuilding: an Orientation p.1

<sup>93</sup> Development as a Human Right: Legal, Political and Economic Dimensions (2010) p.253

<sup>94</sup> Ibid p.xxxviii

### **3 National context: Economic and Social Rights in Haiti**

#### **3.1 Historical background**

For decades, Haiti has been ruled by some long-term dictatorships, leading to several periods of political instability, including coups d'états and popular uprisings.<sup>95</sup> During the last democratic elections, the first round carried out in November 2010 was characterised by allegations of fraud leading to public demonstrations and street violence.<sup>96</sup> A second round of elections held in March 2011 were won by Mr. Michel Martelly with 68% of votes, albeit with a participation rate inferior than 22%.<sup>97</sup> Moreover, the political system has consistently been ranked among the most corrupt in the world.<sup>98</sup>

The country's unemployment rate is estimated at about 80%, and out of a population officially numbering 8.1 million inhabitants, more than half of the population is living in extreme poverty (US\$ 1 per person, per day).<sup>99</sup> Indeed, Haiti is considered to be the poorest country in the region.<sup>100</sup>

Haiti has also been consistently affected by several natural disasters.<sup>101</sup> The country has been struck by hurricanes that have caused significant loss of human life and material damage, such as Hurricane Jeanne, which flooded the town of Gonaives in 2004 and caused around 3,000 deaths.<sup>102</sup> On 12 January 2010, a 7.0 magnitude earthquake struck

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<sup>95</sup> Human Rights Council (2011) UPR National report p.1, 15

<sup>96</sup> Debate on the situation of Haiti (Security Council, 8 March 2012, S/PV.6732) p.22

<sup>97</sup> Taft-Morales (2011) p. 7

<sup>98</sup> Transparency International (2011) corruption perception index

<sup>99</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.1,9

<sup>100</sup> Debate on the situation of Haiti (Security Council, 8 March 2012, S/PV.6732) p.22

<sup>101</sup> Human Rights Council (2011) UPR National report p.14

<sup>102</sup> Ibid p.15; MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.7



Haiti and devastated the capital city Port-au-Prince, leaving between 220,000 and 300,000 people dead and 25% of the population displaced.<sup>103</sup> As a consequence of this earthquake, there was widespread damage and government agencies were destroyed.<sup>104</sup>

In October 2010, a cholera epidemic broke out and more than 7,000 people died.<sup>105</sup> The suspicion that the origin of the cholera epidemic was caused by UN Nepalese peacekeepers led to violence and decreased confidence in the UN and MINUSTAH.<sup>106</sup> To overcome this distrust, the UN Secretary General appointed an Independent Panel of Experts to investigate the outbreak.<sup>107</sup> Although the UN peacekeepers were not directly blamed, it was concluded that the origin of the outbreak was a South Asian strain of cholera.<sup>108</sup>

There are a number of specific human rights concerns regarding the lack of access to basic services such as education, health care, water, sanitation and adequate shelter, as well as a lack of transparency and participation in decision-making.<sup>109</sup> There are further concerns due to the lack of rule of law, the state of the institutions, sexual and gender based violence (SGBV), and the impunity for serious human rights violations.<sup>110</sup> As a consequence of all these factors, the international community plays a large role in taking care of the short-term emergency needs and in designing the long-term reconstruction programmes of the country.<sup>111</sup>

### 3.2 Situation of vulnerable groups in Haiti

Although human rights concerns that affects people living in camps after the earthquake are often the same as those affecting the general population, particularly the hundreds of thousands of people living in slums, in any crisis situation violations of human rights

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<sup>103</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.1

<sup>104</sup> Human Rights Council (2011) UPR National report p.14-15

<sup>105</sup> Debate on the situation of Haiti (Security Council, 8 March 2012, S/PV.6732) p.5

<sup>106</sup> Maguire and Nesvaderani (2011); Schuller (2010)

<sup>107</sup> Independent Panel of Experts on the Cholera Outbreak in Haiti (Final Report) p.3, 29

<sup>108</sup> Ibid p.29

<sup>109</sup> Human Rights Council (2011) UPR National report p.12

<sup>110</sup> Amnesty International submission to the UN UPR 12th session of the UPR Working Group (October 2011) p.1-4; Human Rights Council (2011) UPR National report p.15

<sup>111</sup> Amnesty International submission to the UN UPR 12th session of the UPR Working Group (October 2011) p.2

are deeper for people with special needs, such as women, children, elderly, persons with disabilities and internal displaced persons (IDPs).<sup>112</sup>

In the case of women's rights, Haiti presents deep-rooted patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men in the family, the workplace and society.<sup>113</sup> This gender inequality and discrimination takes place through laws and public institutions, constituting a barrier to women's equal treatment and full enjoyment of their rights.<sup>114</sup> As a consequence, women are less likely to have access to formal education and professional opportunities and they are underrepresented in public and political processes.<sup>115</sup>

De facto discrimination remains high against specific groups of vulnerable children such as girls, *restaveks*, children from poor families, street children, children with disabilities and children living in rural areas.<sup>116</sup> According to the OHCHR, "incidences of sexual abuse of women and girls, trafficking of human beings between Haiti and the Dominican Republic, child domestic workers and inadequate access to primary education by the majority of children remain alarming."<sup>117</sup>

IDPs are another vulnerable group whose human rights have been particularly affected.<sup>118</sup> They face problems of access to food, water, shelter, education, health care and employment.<sup>119</sup> Women, girls and occasionally boys IDPs, have experienced

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<sup>112</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.6-7

<sup>113</sup> Human Rights Council (2011) UPR National report p.12

<sup>114</sup> Indeed, according to the UPR National report, rape became a criminal offence by a presidential decree in July 2005; Human Rights Council (2011) UPR National report p.11-12

<sup>115</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.7-8; Human Rights Council (2011) UPR National report p.12

<sup>116</sup> According to UNICEF in its report "Reintegrating 'restavek' children with their parents in post-earthquake Haiti" (November 2010), *restaveks* refers to "a term describing children who were given away by their parents to serve as unpaid domestic servants".

([http://www.unicef.org/emerg/haiti\\_56712.html](http://www.unicef.org/emerg/haiti_56712.html)). For other references please see: Amnesty International submission to the UN UPR 12th session of the UPR Working Group (October 2011) p.1-2

<sup>117</sup> Human Rights Council (2011) UPR National report p.7-8; OHCHR Strategic Management Plan 2012-2011 p.97

<sup>118</sup> Human Rights Council (2011) UPR National report p.6

<sup>119</sup> Amnesty International submission to the UN UPR 12th session of the UPR Working Group (October 2011) p.1-2

SGBV. Nevertheless, this was also a problem prior to the earthquake and which is likely to worsen partly due the socio-economic situation.<sup>120</sup>

### 3.3 Legal and Institutional framework for the protection of economic and social rights

#### 3.3.1 Legal framework and shortcomings

Haiti has ratified the following core universal human rights treaties: CERD (1972); ICCPR (1991); CEDAW (1981); CRC (1995); CRPD (2009) and Optional Protocol (OP) to the CRPD (2009). Haiti is not a party of the ICESCR; OP to the ICESCR; OP to the ICCPR; OP to CEDAW; OP to the CRC on the involvement of children in armed conflict; OP to the CRC on the sale of children, child prostitution and child pornography.

The Constitution of the Republic of Haiti (1987) states in its Article 276 that international treaty law has primacy over national law. In its preamble, it refers to the UDHR and to principles relating to economic, social and cultural rights in order to “constitute a socially just, economically free and politically independent Haitian nation.” It also refers to the elimination of “all discrimination between the urban and rural populations...by recognising the right to progress, information, education, health, employment and leisure for all citizens.”

##### 3.3.1.1 Right to health

Article 19 of the Constitution describes the obligation “to guarantee the right to life, health, and respect of the human person for all citizens without distinction...” Article 23 establishes the obligation to “ensure for all citizens...appropriate means to ensure protection, maintenance and restoration of their health by establishing hospitals, health centers and dispensaries.”

Although the right to health is enshrined in the Constitution, the access to health care has been a long date challenge for the Haitian State.<sup>121</sup> Measures taken in the past to

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<sup>120</sup> Ibid p.2-3

<sup>121</sup> Human Rights Council (2011) UPR National report p.10

improve medical services have had mixed results on account of the country's political and economic difficulties.<sup>122</sup> For instance, a partnership with the Government of Cuba, significantly reduced infant and child mortality and as result of joint efforts with the international community, HIV prevalence also markedly fell.<sup>123</sup>

Public hospitals and clinics exist in all administrative departments and in many municipalities, but generally lack the medical equipment and medicines to provide necessary treatment.<sup>124</sup> Haiti has a policy of free primary health care, but in practice patients are expected to pay for treatment.<sup>125</sup> Moreover, the costs of private health facilities are prohibitive for the majority of the population.<sup>126</sup>

Access to sexual, reproductive and maternal health care services remain deficient for women and girls, and for those victims of SGBV in particular.<sup>127</sup> Indeed, they must overcome fear, discrimination and a lack of financial resources in order to get access to medical care.<sup>128</sup> In 2009, CEDAW recommended the improvement of women's access to health care and, more specifically, to decrease the maternal mortality rate; as well as the enactment of the law on partial decriminalisation of abortion.<sup>129</sup>

The earthquake of 2010 destroyed over 50 hospitals and health centres and 300,000 people were injured.<sup>130</sup> Moreover, more than 4,000 severely injured people who had to undergo emergency operations and amputations were left with disabilities.<sup>131</sup> Despite the support by some humanitarian associations, some people with spinal cord injuries could die because of a lack of proper care.<sup>132</sup> Since the outbreak of cholera in October

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<sup>122</sup> Ibid

<sup>123</sup> Ibid

<sup>124</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.9

<sup>125</sup> Ibid

<sup>126</sup> Ibid

<sup>127</sup> Amnesty International submission to the UN UPR 12th session of the UPR Working Group (October 2011) p.3

<sup>128</sup> Ibid p.3

<sup>129</sup> CEDAW (2009) Concluding observations para 37

<sup>130</sup> Human Rights Council (2011) UPR National report p.14-15

<sup>131</sup> Report of the Independent Expert on the situation of human rights in Haiti, Michel Forst (Human Rights Council, 4 April 2011) para 35

<sup>132</sup> Ibid

2010, the right to health, access to safe and clean drinking water and proper sanitation are all exceptionally urgent concerns.<sup>133</sup>

There are currently 798 hospitals in Haiti and funding is awaited for projects that aim to increase this number and improve health coverage across the country.<sup>134</sup>

### 3.3.1.2 Right to education

According to Article 32 of the Constitution, the State is responsible for guaranteeing the right to education, and primary education should be compulsory and free. The State is also committed to “ensuring that public and private sector teachers are properly trained.”<sup>135</sup> Furthermore, “primary schooling is compulsory under penalties to be prescribed by law” ... and ... “classroom facilities and teaching materials shall be provided by the State to elementary school students free of charge.”<sup>136</sup> The State also has the duty to “intensify the literacy campaign for the masses.”<sup>137</sup>

However, facts reveal a huge gap between what is guaranteed in the Constitution and what the reality for many Haitians is. Haiti's literacy rate is 49%, the enrolment rate for primary schools is 48% for male and 52% for female, while secondary school attendance is only 18% male and 21% female (period 2005-2010).<sup>138</sup> Haiti counts with 15,200 primary schools, of which 80% are non-public and managed by NGOs, religious organizations, etc., and the Government's role as regulator of the public and private education system is very limited.<sup>139</sup>

Before the earthquake, spending was approximately 2% of its GDP per year on schools.<sup>140</sup> This was slightly less than half the regional average of budget allocation for public education.<sup>141</sup> Moreover, the education system is highly geographically

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<sup>133</sup> Ibid

<sup>134</sup> Human Rights Council (2011) UPR National report p.10

<sup>135</sup> Constitution art. 32 (1)

<sup>136</sup> Ibid art. 32 (3)

<sup>137</sup> Ibid art. 32 (9)

<sup>138</sup> UNICEF. At a glance: Haiti, Statistics.

<sup>139</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.10

<sup>140</sup> Columbia University, School of International and Public Affairs (2011) p.14

<sup>141</sup> Ibid

centralised, with only 20% of education-related expenditures reaching rural areas, which account for 70% of Haiti's population.<sup>142</sup> According to estimations of the World Bank in 2004, over 80% of college graduates from Haiti were living abroad with their home remittances representing 52.7% of Haiti's GDP.<sup>143</sup>

The majority of children in Haiti do not attend school due to poor nutrition, lack of resources and availability of public school facilities.<sup>144</sup> Although the Constitution stipulates that primary education is free, in reality, parents must often pay tuition and other indirect costs such as textbooks and uniforms.<sup>145</sup> A lack of legal documentation has also prevented children from registering for national exams and accessing secondary or superior education.<sup>146</sup>

The structural problems regarding education worsened after the earthquake. According to available figures, 3,978 schools were damaged and approximately 1,500 teachers were killed.<sup>147</sup> The earthquake also interrupted the education of nearly 2.5 million children and many children lost their parents, who were responsible for paying school fees.<sup>148</sup>

Measures were taken with a view to reopening schools and strengthening education, such as updating a National Action Strategy; subsidies were granted to schools that were damaged or destroyed; teams of psychologists were made available to traumatised students; etc.<sup>149</sup> Despite these efforts, education services remain inadequate, inefficient and suffer from low standards.<sup>150</sup>

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<sup>142</sup> Ibid

<sup>143</sup> World Bank (2006) Latin America Shouldn't Bet Everything On Remittances.

<sup>144</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.10

<sup>145</sup> Ibid

<sup>146</sup> Ibid

<sup>147</sup> Ibid

<sup>148</sup> Ibid

<sup>149</sup> Human Rights Council (2011) UPR National report p.13

<sup>150</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.10

### 3.3.1.3 Right to adequate housing

Although housing has been a serious problem in Haiti for several decades, particularly in large towns, the right to adequate housing is briefly mentioned in Article 22 of the Constitution, which only refers that “the State recognizes the right of every citizen to decent housing, education, food and social security.” Nevertheless, a right that has more content and which protects people with higher income is the right to private property.<sup>151</sup>

The increasing proliferation of shantytowns in the capital and in other cities has been a product of a combination of factors such as general political instability, lack of urban planning, rural exodus, urban population growth, centralisation and land dispossession.<sup>152</sup> Land administration is characterised by irregular practices and a high degree of informality in terms of land tenure, ownership and land registration.<sup>153</sup> Furthermore, the absence of standard building regulations has resulted in the irregular issuance of building permits and the construction of buildings which do not meet minimum safety criteria, as was evident following the earthquake.<sup>154</sup>

The right to adequate housing was one of the rights most seriously impacted after the earthquake. Almost 105,000 houses were entirely destroyed and over 208,000 damaged.<sup>155</sup> By June 2012, around 400,000 Haitians were living in camps and temporary shelters located in public areas or on private property formed spontaneously within and on the outskirts of the cities affected by the earthquake.<sup>156</sup> Unfortunately, some camps are inadequate and insecure due to overcrowding, lack of lightning, lack of adequate hygiene and sanitation facilities, and the breakdown of law and order.<sup>157</sup> Moreover, there is a lack of access to any means of earning a living or generating

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<sup>151</sup> Constitution art. 36

<sup>152</sup> Human Rights Council (2011) UPR National report p.16; MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.9

<sup>153</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.9

<sup>154</sup> Ibid

<sup>155</sup> Human Rights Council (2011) UPR National report p.15

<sup>156</sup> United Nations Radio: Thousands of Haitians still living in makeshift camps.

<http://www.unmultimedia.org/radio/english/2012/06/thousands-of-haitians-still-living-in-makeshift-camps/>; Debate on the situation of Haiti (Security Council, 8 March 2012, S/PV.6732) p.22

<sup>157</sup> Amnesty International submission to the UN UPR 12th session of the UPR Working Group (October 2011) p.3

income, there is an unequal distribution of humanitarian and emergency aid and there are concerns about the rising number of weapons in circulation.<sup>158</sup>

In some camps, the majority of the population had fled destroyed homes and lacked any viable alternative housing option.<sup>159</sup> There were other camps however where high percentages of its inhabitants had fled high rents, insalubrity and the insecurity of slums and came to camps in search of free water, better sanitation and possible land grants.<sup>160</sup> An additional obstacle to action is that developing data collection systems across 1,300 camps with almost no camp management has been difficult.<sup>161</sup> Thus, this has affected the assistance and protection provided, making it very difficult to collect accurate data on human rights concerns, for instance in cases such as SGBV.<sup>162</sup>

The international community has started to shift its focus away from camps which has diminished funding for services, and landowners has aggressively started to evict IDPs.<sup>163</sup> In April 2011, the International Organisation for Migration (OIM) estimated that one in four persons living in camps were threatened with eviction, with over 44,000 having already been evicted.<sup>164</sup> Contributing to this situation, the State action regarding long-term shelter for earthquake-affected populations, has tended to focus only on emptying camps and not on a HRBA that would ensure camp closure based on conditions that lead to the realisation of the right to adequate housing.<sup>165</sup> Indeed, there are concerns regarding the lack of due process, and the respect and protection of rights during processes of evictions, including the use of force as well as participation of public authorities without judicial authorization.<sup>166</sup>

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<sup>158</sup> Ibid; OHCHR (2011) Compilation prepared by the Office of the High Commissioner for Human Rights: Working Group on the UPR p.11

<sup>159</sup> Plateforme des Organisations Haïtiennes des Droits Humains (2011) para 15

<sup>160</sup> Report of the Independent Expert on the situation of human rights in Haiti, Michel Forst (Human Rights Council, 4 April 2011) para 17; OHCHR (25 July 2011) Summary of Stakeholders for the UPR para 54.

<sup>161</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.1

<sup>162</sup> Ibid p.6; Human Rights Council (2011) UPR National report p.12

<sup>163</sup> Global Justice Clinic/Center for Human Rights and Global Justice (2012) p.2-3

<sup>164</sup> International Organization for Migration (01 April 2011).

<sup>165</sup> Amnesty International submission to the UN UPR 12th session of the UPR Working Group (October 2011) p.2

<sup>166</sup> Ibid



According to IOM, as per January 2012, the number of IDPs living in camps continues to decrease.<sup>167</sup> However, the overall conditions in camps continue to deteriorate not least as a consequence of the withdrawal of humanitarian agencies and their provision of basic services.<sup>168</sup>

### 3.3.2 Institutional framework and shortcomings

According to the Post Disaster Needs Assessment (PDNA), as a consequence of the earthquake 60,000 civil servants were killed and principal government buildings were destroyed, including the national palace, parliament and a majority of the public ministries, as well as police stations and courts.<sup>169</sup>

#### 3.3.2.1 Law enforcement authorities and the administration of justice

The main challenges of the law enforcement authorities include weak rule of law institutions, poorly educated and trained officials, inadequate human and other resources, inadequate oversight, arbitrary arrest and detention, ill-treatment during detention, prolonged pre-trial detention, severe prison overcrowding and abuse of authority.<sup>170</sup>

Although the Government is under an obligation to initiate inquiries into allegations as soon as they are brought to their attention, investigations are rarely conducted, and if they are, their independence and rule of law practice becomes undermined.<sup>171</sup> Furthermore, although the right to *habeas corpus* is guaranteed in Article 26 of the Constitution, the authorities fail to respect this right on a regular basis.<sup>172</sup> As a result, in the current judicial system, the Haitian Government recognises that “litigants have little confidence in the institutions of justice and sometimes prefer to solve their problems out of court, if not to seek summary

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<sup>167</sup> International Organization for Migration. IOM's Earthquake Response Creates Skills and Jobs to Drive the Recovery in Haiti (January 17, 2012)

<sup>168</sup> Amnesty International submission to the UN UPR 12th session of the UPR Working Group (October 2011) p.2

<sup>169</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.2, 6

<sup>170</sup> Amnesty International submission to the UN UPR 12th session of the UPR Working Group (October 2011) p.1; MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.3

<sup>171</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.4

<sup>172</sup> Amnesty International submission to the UN UPR 12th session of the UPR Working Group (October 2011) p.1

justice.”<sup>173</sup> The gaps in the justice system have lead to highly rampant impunity, which poses a major problem for the protection of human rights.<sup>174</sup>

### 3.3.2.2 National Human Rights Institution (*Office de la Protection du Citoyen*)

Under Article 207 of the Constitution, the State established the *Office de la Protection du Citoyen* (OPC) to protect all individuals against any form of abuse by the government.<sup>175</sup> Nevertheless, despite the existence of a law that sets the conditions and regulations for the operation of the OPC, the institution has not embraced the Paris Principles yet.<sup>176</sup> As of May 2012, the OIC was still not accredited as a national human rights institution by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).<sup>177</sup> In July 2010, a joint project between the OHCHR and the Organisation Internationale de la Francophonie (OIF) was launched in order to assist the institution to carry out a capacity assessment with a view to promoting a HRBA during the reconstruction phase of the country.<sup>178</sup>

The CESCR has referred that the work of national human rights institutions is an important step that can be taken in regards to achieving progressively the full realization of economic and social rights.<sup>179</sup> In this regard, the HRC has also referred that independent and impartial administrative mechanisms such as this one is required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively.<sup>180</sup>

## 3.4 Concluding remarks

Based on the Constitution, the international treaties ratified by Haiti have primacy over national legislation. The State has yet to ratify the ICESCR. However, through the ratifications of other core international human rights treaties, such as the ICCPR,

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<sup>173</sup> Human Rights Council (2011) UPR National report p.15

<sup>174</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.5

<sup>175</sup> Human Rights Council (2011) UPR National report p.5

<sup>176</sup> MINUSTAH/UNCT (2011) Report for the Human Rights Council in the context of its examination of the UPR of Haiti p.2

<sup>177</sup> ICC, Accreditation status as of May 2012

<sup>178</sup> Report of the Secretary-General. National institutions for the promotion and protection of human rights (7 February 2011) p.5

<sup>179</sup> CESCR General Comment No. 10 para 1; CESCR General Comment No. 7 para 4

<sup>180</sup> HRC General Comment No. 31 para 15

CEDAW, CRC, CERD and CRPD, Haiti is obliged to guarantee the right to health, right to education and right to adequate housing of the people under its jurisdiction.

Moreover, the Constitution of Haiti enshrines different economic and social rights, including the right to education and the right to health. It is remarkable that although adequate housing has been a long-date problem for many Haitians, there is a brief reference in the Constitution to this right. On the contrary, the right to private property, being a right that protects people in a better economic situation, is developed to a greater extent.

This shows that although human rights are reflected in legislations, the enactment of laws is a further fact, rather than a defining characteristic of human rights themselves.<sup>181</sup> In this regard, despite the fact that the right to health, right to education and right to adequate housing are enshrined in international and national law, Haiti presents serious structural and temporary challenges in implementing policies which could offer full compliance of all these provisions.

Regarding the structural challenges, Haiti presents a weak rule of law and weak institutions as well as high levels of impunity and corruption, which deprive the State of an essential framework to address its responsibilities. Other challenges such as weakness of the education system and poor health coverage have also deeply affected the protection of human rights. Furthermore, insufficient personnel, inadequate training for many officials, as well as inadequate facilities and equipment as a consequence of the severe lack of resources and low economic growth rate leading to poverty, limit the capacity of Haiti to protect human rights. Haiti has been also subjected to serious political crises and natural disasters, which the country has not been able to tackle. All these national constraints were greatly compounded by the earthquake of 12 January 2010.

In this context, since there is an absence of action and capacity by the State to guarantee the protection of the right to health, right to education and right to adequate housing, in

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<sup>181</sup> Development as a Human Right: Legal, Political and Economic Dimensions (2010) p.6

practice, the burden of responsibility regarding the provision of these rights is placed primarily on international actors, and in some cases, it includes the participation of private land-owners and of camp inhabitants themselves.

As a consequence of all the shortcomings to provide security and basic rights, the overall situation could lead to a human rights and political crisis, particularly if the camps are not stabilised. This leads us to the following questions: firstly, if a State is not capable of providing effective protection, are other State actors legally bound to cooperate for the protection of economic and social rights? Secondly, to what extent have human rights been included in the reconstruction and peace building programme in Haiti?

## **4 Obligations of State actors to provide cooperation for the protection of Economic and Social Rights**

### **4.1 Better standard of life for everyone**

In the preamble of the UN Charter, States Parties agree to promote social progress and better standards of life and to employ the international machinery for the promotion of the economic and social advancement of all peoples, as well as to combine efforts to accomplish these aims. Article 28 of the UDHR also reinforces the idea that the enjoyment of these rights is universal, regardless of one's country of origin, referring that "everyone is entitled to a social and international order in which alone the rights and freedoms set forth in this Declaration can be fully realized."

The ICESCR further refers in its preamble that the Covenant protects human rights that are fundamental to the dignity of every person. It also reaffirms that the universality of the human dignity and equal rights of all members of the human family is the foundation of freedom, justice and peace in the world. In this regard, the universal character of the enjoyment of economic and social rights and their connection with world peace and justice is mentioned in the preambles of the UDHR and ICESCR, which refers that "free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights..."

### **4.2 The duty of cooperation and assistance for the protection of economic and social rights**

Based on Article 1(3) of the UN Charter, one of the main purposes of the UN is to achieve international cooperation in solving international problems of an economic and social character. Furthermore, through Article 13(1) (b) States commit themselves to "promoting international cooperation in the economic, social, cultural; educational, and

health fields, and assisting in the realization of human rights and fundamental freedoms for all...”

The principle of international cooperation is also recognised in Article 55 of the UN Charter which refers to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations. Article 55(a) (b) further relates this commitment to the promotion of “higher standards of living, full employment, and conditions of economic and social progress and development”; as well as “solutions of international economic, social, health, and related problems; and international cultural and educational cooperation...” Cooperation is further referred in Article 56, which states that all members pledge themselves to take joint and separate action for the achievement of the purposes set forth in Article 55. CESCR mentions that:

...in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard...<sup>182</sup>

The CRC further considers that Articles 55 and 56 of the UN Charter identify the overall purposes of international economic and social cooperation.<sup>183</sup>

The ICESCR also contains several provisions that refer to international cooperation. First, Article 2(1) specifies that each State Party undertake to take steps in order to achieve progressively the full realisation of the rights recognised in the Covenant, individually and through international assistance and cooperation, and to the maximum of its available resources. Second, based on Article 11(1) States Parties agree to take appropriate steps to ensure the realisation of the right to an adequate standard of living, recognising the essential importance of international cooperation based on free consent. Third, in Article 11(2) States Parties agree to take individually and through international

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<sup>182</sup> CESCR General Comment No.3 para 14

<sup>183</sup> CRC General Comment No.5 para 60

cooperation relevant measures concerning the right to be free from hunger. According to Alston and Quinn, these provisions could be interpreted as “an obligation on the part of the richer states parties to provide assistance to poorer states parties in situations in which the latter are prevented by a lack of resources from fulfilling their obligations under the Covenant to their citizens.”<sup>184</sup> Fourth, States Parties recognise in Article 15 the benefits of international contacts and cooperation in the scientific and cultural fields. And last, Article 23 refers again to the importance of international cooperation as a tool to protect the rights of all, including through the implementation of methods such as the conclusion of conventions, the adoption of recommendations, the supplying of technical assistance, and the holding of regional and technical meetings.

Regarding the obligation to respect, when formulating their international assistance programmes, developed States should avoid imposing burdensome conditions.<sup>185</sup> Moreover, they should allow developing States to devise programs for the assistance received instead of requiring countries to follow donor-designed reforms, and the participation of the beneficiaries in the formulation and implementation of any international programme should be free and meaningful.<sup>186</sup>

The CRC also refers to the importance of international cooperation. In its Article 4, it refers that in regards to economic, social and cultural rights, States Parties shall undertake legislative, administrative, and other measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.<sup>187</sup> In this regard, the Committee mentions that “...when States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation...”<sup>188</sup> The Committee also refers to the implementation of the Convention is a cooperative exercise for the States and that this article and others in the Convention highlight the need for international cooperation.<sup>189</sup>

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<sup>184</sup> Alston and Quinn (1987) p.186-187

<sup>185</sup> Sepulveda (2009) p.90

<sup>186</sup> Ibid

<sup>187</sup> CRC General Comment No.5 para 7

<sup>188</sup> Ibid

<sup>189</sup> Ibid para 60

Regarding international development assistance, although they do not automatically contribute to the promotion of respect for economic, social and cultural rights, the CESCR specifies that the Covenant should, wherever possible and appropriate, be given specific and careful consideration.<sup>190</sup> The CRC also recommends the use of the Convention as a framework and that programmes of donor States should be rights-based.<sup>191</sup> In this connection, the CRC “urges States to meet internationally agreed targets, including the United Nations target for international development assistance of 0.7 per cent of gross domestic product...”<sup>192</sup>

The CRPD recognises in its preamble “the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries.” Moreover, in its article 4(2), the CRPD refers that “with regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights...” In Article 32(1), the CRPD elaborates more on the importance of international cooperation in support of national efforts for the realisation of the purpose and objectives of the Convention. In this regard, it refers to the implementation of the following measures:

- (a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;
- (b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
- (c) Facilitating cooperation in research and access to scientific and technical knowledge;
- (d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

The Declaration on Friendly Relations supports the codification of the principle that there is a duty of States to cooperate with each other, in the economic, social and

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<sup>190</sup> CESCR General Comment No.2 para 7

<sup>191</sup> CRC General Comment No.5 para 61

<sup>192</sup> Ibid



cultural fields, for the promotion of international cultural and educational progress. It further adds that “States should cooperate in the promotion of economic growth throughout the world, especially that of developing countries.”

The Declaration on the Right to Development also refers in its Article 4(1) that “States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.” Moreover, it refers that as a complement to efforts by developing countries, international cooperation is essential to provide appropriate means and facilities to foster their comprehensive development; and States have a duty to cooperate with each other in ensuring development and eliminating obstacles to development.<sup>193</sup> The Declaration also notes in its Article 6(1) that “all States should cooperate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.”

According to Rajeev Malhotra, although States are the primary duty holder in the realisation of the Right to Development, international cooperation should aim as well at the achievement of social justice and the realisation of all human rights.<sup>194</sup> Malhotra further refers that in the writing process of the declaration, a role was foreseen for affirmative action both at the national level, in favour of disadvantaged groups, and at the international level, regarding development assistance to countries constrained by limited availability of resources and technical capacity.<sup>195</sup>

Another relevant instrument regarding international cooperation for the protection of economic and social rights is the Vienna Declaration and Programme of Action. This instrument specifies in its Article 34 that “increased efforts should be made to assist countries which so request to create the conditions whereby each individual can enjoy universal human rights and fundamental freedoms.” It further mentions in its Article 14 and Article 25 that the existence of widespread extreme poverty prevents the full and

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<sup>193</sup> Declaration on the Right to Development art 3 (3), art 4 (2)

<sup>194</sup> Development as a Human Right: Legal, Political and Economic Dimensions (2010) p.249-250

<sup>195</sup> Ibid p.250

effective enjoyment of human rights, and that extreme poverty and social exclusion constitute a violation of human dignity. According to Philip Alston, this formulation points to a principal justification of Mary Robinson's proposition about how human dignity, which is the foundation stone of human rights, is incompatible with poverty, and how in cases where a national government does not have the resources to remedy (extreme) poverty, a human rights-based responsibility falls upon the international community.<sup>196</sup> In this context, the CESCR recalls the statement in the Vienna Declaration, which states that "while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights."<sup>197</sup>

The Millennium Development Goals (MDGs) also call for the cooperation of States in order to improve the standards of living of everyone.<sup>198</sup> Goal 8 is a commitment to a global partnership for development, which includes a set of targets for addressing the needs of the least developed countries and a more generous development assistance for countries committed to poverty reduction.<sup>199</sup> Nevertheless, despite the target for donors of the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD) to devote more resources to official development assistance, only five of the twenty-two member States of the DAC have met the UN target of 0.7% of gross domestic product.<sup>200</sup> In any case, the CRC refers that "...in the United Nations Millennium Declaration and at other global meetings, including the United Nations General Assembly special session on children, States have pledged themselves, in particular, to international cooperation to eliminate poverty..."<sup>201</sup>

Furthermore, the 2005 Paris Declaration on Aid Effectiveness and the 2008 Accra Agenda for Action have also embraced mutual accountability, coordination, and the

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<sup>196</sup> Alston (2005) p.787

<sup>197</sup> CESCR General Comment No.7 para 18

<sup>198</sup> Reinventing Development? Translating Rights-based Approaches from theory into practice (2005) p.48

<sup>199</sup> Universal Human Rights and extraterritorial obligations (2010) p.107

<sup>200</sup> Ibid

<sup>201</sup> CRC General Comment No.5 para 60

alignment of aid with recipient government priorities.<sup>202</sup> The Maastricht Principles also refers in part II (8) (b) that “obligations of a global character... set out in the Charter of the United Nations and human rights instruments [require States] to take action, separately, and jointly through international cooperation, to realize human rights universally.”

#### 4.2.1 Right to health

The CESCR highlights that based on the spirit of article 56 of the UN Charter “...States parties should recognise the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to health.”<sup>203</sup> The Committee further declares that States Parties and other actors in a position to assist should provide international assistance and cooperation, especially economic and technical, which enable developing countries to fulfil their obligations.<sup>204</sup> Moreover, depending on the availability of resources, States in a position to assist developing countries in fulfilling their core and other obligations under the Covenant should facilitate access to essential health facilities, goods and services in other countries, wherever possible and provide the necessary aid when required.<sup>205</sup>

In this connection, the CESCR specifies that in times of emergency, “States parties have a joint and individual responsibility, in accordance with the Charter of the United Nations and relevant resolutions of the United Nations General Assembly and of the World Health Assembly, to cooperate in providing disaster relief and humanitarian assistance...”<sup>206</sup> Furthermore, “each State should contribute to this task to the maximum of its capacities” and priority in terms of the “provision of international medical aid, distribution and management of resources, such as safe and potable water, food and medical supplies, and financial aid, should be given to the most vulnerable or marginalized groups of the population.”<sup>207</sup>

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<sup>202</sup> Global Justice Clinic/Center for Human Rights and Global Justice (2012) p.132

<sup>203</sup> CESCR General Comment No.14 para 38

<sup>204</sup> Ibid para 45

<sup>205</sup> Ibid para 39

<sup>206</sup> Ibid para 65

<sup>207</sup> Ibid para 40

The CESCR also mentions that “States parties should ensure that the right to health is given due attention in international agreements and, to that end, should consider the development of further legal instruments.”<sup>208</sup> In this context, States Parties have an obligation to ensure that their actions as members of international organizations take due account of the right to health. These include ensuring that international financial institutions pay greater attention to the protection of the right to health in terms of lending policies, credit agreements and international measures of these institutions.<sup>209</sup>

The CRC refers in its Article 24(4) that States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realisation of the right to health and particular account shall be taken of the needs of developing countries. Through Article 25 and Article 32, the CRPD is the other international treaty which recognises the right to health and which includes a responsibility of international assistance and cooperation in health.

Other non-binding international human rights commitments which recognise that developed States have a key role to play in supporting health in developing countries, include the outcome documents of the International Conference on Primary Health Care (1978), the World Conference on Human rights (1993), the International Conference on Population and Development (1994), the Fourth World Conference on Women (1995), the Millennium Summit (2000), the UN General Assembly Special Sessions on HIV/AIDS and Children (2001 and 2002), the World Summit on Sustainable Development (2002), and the World Summit (2005).<sup>210</sup>

Nevertheless, as mentioned previously, although the MDGs and various other international political commitments include agreements by States to increase funds for development, including health, in low income countries, this intention has not been followed by the injection of funds.<sup>211</sup> In this regard, the Alma-Ata Declaration in its para II proclaims that “the existing gross inequality in the health status of the people,

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<sup>208</sup> Ibid para 39

<sup>209</sup> Ibid

<sup>210</sup> Universal Human Rights and extraterritorial obligations (2010) p.107

<sup>211</sup> Ibid p.105

particularly between developed and developing countries, as well as within countries, is politically, socially and economically unacceptable and is, therefore, of common concern to all countries.”

Judith Bueno de Mesquita, Paul Hunt, and Rajat Khosla refer that international assistance and cooperation should be directed towards key features of the right to health, i.e. entitlements, which encompasses medical care and determinants of health; equality and non-discrimination, particularly in regards to disadvantage individuals, communities, and populations, such as women, minorities and those living in poverty; participation of those affected in health-related policymaking and implementation; and monitoring and accountability, which should be promoted by the international assistance and cooperation in recipient countries as well as accountability of donors for their international assistance and cooperation in health.<sup>212</sup>

#### 4.2.2 Right to education

Based on Article 26 of the UDHR, Article 13(1) of the ICESCR refers to the universal character of this right since “education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”

In this regard, Article 10 of the World Declaration on Education for All declares that meeting basic learning needs constitutes a universal human responsibility, which requires international solidarity. Furthermore, it adds that all nations have valuable knowledge and experiences to share for designing effective educational policies and programmes. The Declaration also highlights in the same article to the commitment to act cooperatively to take all necessary steps to achieve the goals of education for all. According to the CESCR, this Article of the Declaration together with Articles 2(1) and 23 of the Covenant, Article 56 of the UN Charter, and Part I, paragraph 34 of the Vienna Declaration, reinforce the obligation of States Parties in relation to the provision

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<sup>212</sup> Universal Human Rights and extraterritorial obligations (2010) p.114-115

of international assistance and cooperation for the full realisation of the right to education.<sup>213</sup>

Moreover, Article 28(3) of the CRC gives the guidance that State Parties shall promote and encourage international cooperation in matters relating to education; in particular with a view to contributing to the elimination of ignorance and illiteracy and account shall be taken of the needs of developing countries. Based on this Article and on the obligations upon States Parties to promote and encourage international cooperation (Articles 4 and 45), the CRC urges States Parties providing development cooperation to ensure that their programmes take full account of Article 29(1), which refers to principles to ensure the development of the child.<sup>214</sup>

#### 4.2.3 Right to adequate housing

Article 11(1) of the ICESCR specifies that the States Parties will take appropriate steps to ensure the realisation of the right to adequate standard of living, including housing, recognising the importance of international cooperation based on free consent. In this regard, the CESCR refers that “States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.”<sup>215</sup>

In this connection, the CESCR mentions that since various development projects financed by international agencies have resulted in forced evictions, international agencies should rigorously avoid involvement in projects, which promote or reinforce discrimination against individuals or groups, or involve large-scale evictions or displacement of persons without the appropriate protection and compensation.<sup>216</sup> The CESCR further recommends respect for the guidelines on relocation and/or resettlement, adopted by some institutions, such as the World Bank and the OECD, since they reflect the obligations contained in the Covenant.<sup>217</sup>

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<sup>213</sup> CESCR General Comment No.13 para 56

<sup>214</sup> CRC General Comment No.1 para 28

<sup>215</sup> CESCR General Comment No.4 para 19

<sup>216</sup> CESCR General Comment No.7 para 17

<sup>217</sup> Ibid para 18

The right to adequate housing has received less support than other rights. Although Target 7D of the MDGs calls for the improvement of the lives of one hundred million slum dwellers by 2020, its achievement is only at 11%, while the improvement of other MDGs range between 50% and 100% and their deadlines is by 2015.<sup>218</sup> Moreover, according to the CESCR:

...less than 5% of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed.<sup>219</sup>

#### 4.3 Applying the substantive rights in Haiti

The Security Council called on resolution 1542 “...to provide substantial international aid to meet the humanitarian needs in Haiti and to permit the reconstruction of the country, utilizing relevant coordination mechanisms...”<sup>220</sup> Nevertheless, the political and security situation in Haiti has remained on the Security Council’s agenda for almost eight years, which may be a source of discouragement for Haitians.<sup>221</sup> In this regard, Haiti has requested the Security Council to no longer be mentioned in UN reports and resolutions as a threat to international peace and security, since this has affected international investors.<sup>222</sup>

In the domestic sphere, the State of Emergency Act adopted in 2010 established the Interim Haiti Reconstruction Commission (IHRC), which was tasked with planning, coordinating and facilitating the implementation of development projects, based on the social and economic benefits for the population.<sup>223</sup> Although the extension of the mandate of the IHRC is currently dependant on the Parliament, many Haitians feel that

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<sup>218</sup> Universal Human Rights and extraterritorial obligations (2010) p.188

<sup>219</sup> CESCR General Comment No.4 para 19

<sup>220</sup> S/RES/1542 art 15

<sup>221</sup> Debate on the situation of Haiti (Security Council, 8 March 2012, S/PV.6732) p.22

<sup>222</sup> Ibid p.21

<sup>223</sup> Human Rights Council (2011) UPR National report para 24-25

some projects have been vague and of questionable coherency.<sup>224</sup> Indeed, it is alleged that very little emphasis has been put on the protection and promotion of human rights.<sup>225</sup> Moreover, the international community has not focused on the Haitian government when sending funding, and as a result funds have been sent to a country that lacks essential capacities.<sup>226</sup>

The UN High Commissioner for Human Rights has made several calls for the incorporation of a HRBA to reconstruction in Haiti.<sup>227</sup> At the national level, she has highlighted that an effective and independent judiciary and a law-enforcement apparatus respectful of human rights, together with a reliable national human rights institution are preconditions to develop full respect for the rule of law in Haiti.<sup>228</sup> She has also urged the international community to ensure “that the continued strengthening of the Haitian State remains the central aim of their action and that they work in collaboration with all relevant parties to ensure respect for international human rights standards in the four areas outlined in the reconstruction strategy: territorial rebuilding, economic rebuilding, social and institutional rebuilding.”<sup>229</sup>

In 2010, the Independent Expert on the situation of Haiti expressed concerns about the lack of any explicit reference to the place of rights in the reconstruction process in spite of repeated recommendations on this point.<sup>230</sup> He has also recommended that “donors and members of the IHRC keep in mind the vision, presented by the Prime Minister at the donors’ conference in February 2010, of a society of fairness, justice and solidarity in which all of the people’s basic needs are satisfied and managed by a strong unitary State.”<sup>231</sup>

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<sup>224</sup> Editorial. Haiti’s Slow Recovery. In: New York Times. 8 January 2012; Report of the Independent Expert on the situation of human rights in Haiti, Michel Forst (Human Rights Council, 4 April 2011) para 67

<sup>225</sup> Report of the Independent Expert on the situation of human rights in Haiti, Michel Forst (Human Rights Council, 4 April 2011) para 67-71

<sup>226</sup> By March 2011, earthquake relief sent to the government was one percent. Global Justice Clinic/Center for Human Rights and Global Justice (2012) p.6

<sup>227</sup> Compilation prepared by the OHCHR: Working Group on the UPR (2011) para 12, para 60, para 73

<sup>228</sup> Ibid para 13

<sup>229</sup> Ibid

<sup>230</sup> Ibid para 12

<sup>231</sup> Report of the Independent Expert on the situation of human rights in Haiti, Michel Forst (Human Rights Council, 4 April 2011) para 67



In this regard, it is fair to mention that some donor countries have supported the incorporation of a HRBA into the reconstruction of Haiti. For instance, Norway has encouraged that human rights be integrated into the work of the IHRC, and it is engaged in the promotion of a HRBA with the aim of increasing the protection of human rights in the reconstruction, particularly of those belonging to vulnerable groups.<sup>232</sup>

Concerning the right to adequate housing, the Independent Expert on the situation of Haiti has noted the progressive transformation of official camps into informal settlements and shantytowns, in which available services, initially intended for a limited number of inhabitants, were wholly inadequate.<sup>233</sup> Furthermore, the Special Rapporteur on adequate housing has also called “to immediately stop all forced evictions of earthquake survivors and encouraged, the authorities to delink land ownership from the right to use the land to live there, based on the recognition of the social function of land in the specific post-disaster context.”<sup>234</sup>

The OHCHR has stated the importance of emphasising to State authorities and the humanitarian community that realising the right to adequate housing becomes more feasible when camp closures are part of a long-term plan that incorporates a HRBA and which breaks the cycle of poverty, i.e. through the creation of new jobs.<sup>235</sup> The High Commissioner further observed that “without an overarching guiding plan, the many national and international temporary housing and reconstruction initiatives in place will be inadequately coordinated, and people will continue to be evicted from camps without adequate alternative solutions.”<sup>236</sup>

The CESCR has mentioned how women, children, youth, older persons, and other vulnerable individuals and groups suffer disproportionately from the practice of forced eviction.<sup>237</sup> The Committee further highlights that women in all groups are especially

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<sup>232</sup> Angell-Hansen, Bente, H.E. Ambassador. Statement by Norway: Support to recovery process in Haiti: A Human Rights approach. Human Rights Council (13th Special Session) 27 January 2010; Norway Mission to the UN. Press Release: Norway joins Interim Haiti Recovery Commission, 18 June 2010.

<sup>233</sup> Compilation prepared by the OHCHR (2011) Working Group on the UPR para 62

<sup>234</sup> Ibid para 61

<sup>235</sup> OHCHR (2011) Haitians must lead on human rights

<sup>236</sup> Compilation prepared by the OHCHR (2011) Working Group on the UPR para 60

<sup>237</sup> CESCR General Comment No.7 para 10

vulnerable given the different forms of discrimination which often apply to them in relation to property rights (including home ownership), rights of access to property or accommodation, and their particular vulnerability to acts of SGBV when they are rendered homeless.<sup>238</sup> This assertion is particular relevant in the case of Haiti, given the vulnerable situation of women.

With regards to the right to health, the spread of cholera deserves special attention. According to the CESCR, given that some diseases are easily transmissible beyond the frontiers of a State, the international community has a collective responsibility to address this problem and the economically developed States Parties have a special responsibility to assist the poorer developing States.<sup>239</sup> Moreover, from a HRBA to development perspective, the claims of social movements should be fostered and development assistance should be considered as a result of national and international obligations, and not as a product of charity and solidarity.<sup>240</sup>

In any case, Haiti is also facing a decrease in the support received through humanitarian organisations and the States, which will impact the sustainability of long-term reconstruction plans.<sup>241</sup> In this regard, Haiti has called on donors to help those organisations to find the necessary resources to provide support for the poorest, particularly in terms of education and food.<sup>242</sup> This decrease of the international support can be explained through the use of tools beyond the legal reasoning, such as the so-called “CNN effect”, according to which international support can depend on the attention received by the media coverage.<sup>243</sup>

Based on this current situation, the international cooperation for the protection of economic and social rights in Haiti reaffirms the opinion of the CESCR which has emphasised that “...in the absence of an active programme of international assistance

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<sup>238</sup> Ibid

<sup>239</sup> CESCR General Comment No.14 para 40

<sup>240</sup> Reinventing Development? Translating Rights-based Approaches from theory into practice (2005) p.60

<sup>241</sup> Debate on the situation of Haiti (Security Council, 8 March 2012, S/PV.6732) p.22

<sup>242</sup> Ibid

<sup>243</sup> Hawkins (2011) p.56

and cooperation on the part of all those States that are in a position to undertake one, the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries.”<sup>244</sup>

#### 4.4 Challenges for the protection of economic and social rights

Beyond what is declared in the treaties regarding the importance of the international cooperation for the protection of human rights, the implementation of economic and social rights have been considered to be controversial. Indeed, contrary to civil and political rights, the progressivity and dependency on available resources referred in Article 2 of the ICESCR can be considered vague with respect to its definition and measures.<sup>245</sup> In this regard, while the ICCPR contains terms such as ‘everyone has the right to...’ or ‘no one shall be...’ the ICESCR usually employs the term ‘State Parties recognize the right of everyone to...’ which can be misinterpreted to imply a weak or non-existent obligation by State.<sup>246</sup>

Nevertheless, according to the CESCR, Article 2 imposes an obligation to move as expeditiously and effectively as possible and any retrogressive measures would require careful considerations and would need to be fully justified in the context of the use of the maximum available resources.<sup>247</sup> Moreover, steps should be deliberate, concrete and targeted as clearly as possible.<sup>248</sup>

The CESCR also recalls that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes, and in order for a State party to be able to attribute its failure to a lack of available resources, it must demonstrate that every effort has been made to meet at least its minimum core obligations.<sup>249</sup> In this connection, Amartya Sen considers that “the understanding that some rights are not fully realized, and may not even be fully

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<sup>244</sup> CESCR General Comment No.3 para 14

<sup>245</sup> Buergenthal, Shelton and Steward (2009) p.71-72

<sup>246</sup> International Protection of Human Rights: A textbook (2009) p.134; Steiner, Alston and Goodman (2007) p.275

<sup>247</sup> CESCR General Comment No.3 para 1

<sup>248</sup> Ibid para 2

<sup>249</sup> Ibid para 10, para 12

realizable under present circumstances, does not, in itself, entail anything like the conclusion that these are, therefore, not rights at all.”<sup>250</sup>

It has also been argued that legal remedies provided by court actions are impracticable for the application of economic and social rights, since contrary to the ICCPR, the ICESCR does not contain any provision requiring States Parties ‘to develop the possibilities of a judicial remedy’.<sup>251</sup> However, based on Article 8 of the UDHR, ‘everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law’, and there is no indication that this applies only to civil and political rights.<sup>252</sup>

Moreover, the CESCR refers to the indivisibility of rights, indicating that:

...the adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.<sup>253</sup>

The CESCR further mentions that “there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions...”<sup>254</sup> In this sense, both the ICCPR and the ICESCR are legally binding treaty instruments of human rights standards, which are already enshrined on the UDHR, which has been ratified by almost all the States.<sup>255</sup> The CRC has also referred that economic and social rights are indeed justiciable.<sup>256</sup>

Another challenge for the justiciability of economic and social rights is that they cannot be appropriately enforceable due to the lack of expertise and capacity of the courts.<sup>257</sup>

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<sup>250</sup> Development as a Human Right: Legal, Political and Economic Dimensions (2010) p.9

<sup>251</sup> ICCPR art 2(3)(b); Steiner, Alston and Goodman (2007) p.313

<sup>252</sup> Steiner, Alston and Goodman (2007) p.313

<sup>253</sup> CESCR General Comment No. 9 para 10

<sup>254</sup> Ibid

<sup>255</sup> International Protection of Human Rights: A textbook (2009) p.135

<sup>256</sup> CRC General Comment No.5 para 25

<sup>257</sup> Social Rights Jurisprudence: emerging trends in International and Comparative Law (2008) p.29, 35

Indeed, if courts deal with positive obligations, this could lead to a dramatic increase in the number of litigations and State institutions might not have the capacity to resolve them.<sup>258</sup> Furthermore, those States that do not count with a rule of law and well-functioning institutions, are hardly capable, and in some cases eager, to protect human rights.<sup>259</sup> Nevertheless, if human rights norms are contained in a treaty or constitution they should by definition be subject to enforcement.<sup>260</sup>

Other scholars consider that economic and social rights are undemocratic in nature, since matters of social benefits should be the domain of the executive and legislative branches of power.<sup>261</sup> However, courts are in charge of judicially supervising the satisfaction of a right.<sup>262</sup>

In this respect, scholars such as Stephen Marks and Bård Andreassen consider that “...state obligations to respect, protect, and fulfil economic and social rights do not always require significant resources or an immediate judicial remedy.”<sup>263</sup> Indeed, in many cases positive obligations are not monetary in orientation, e.g. creating legislation to ensure the title and demarcation of indigenous lands.<sup>264</sup>

With regards to international cooperation, although different core international human rights instruments have somehow indicated its relevance to protect economic and social rights, the preparatory work of the ICESCR shows that the drafters did not wish to impose an obligation on any State to provide such assistance or co-operation.<sup>265</sup> As such, the drafters did not use the word ‘to guarantee’ to avoid any obligation of conduct, and instead a softer version ‘taking steps’ was preferred.<sup>266</sup> In this regard, the key point that was relevant for its enforcement was the “immediate application.”<sup>267</sup> Based on the commentary on Article 12 of the Draft Articles on State Responsibility, whether and

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<sup>258</sup> International Protection of Human Rights: A Textbook (2009) p.136

<sup>259</sup> Social Rights Jurisprudence: emerging trends in International and Comparative Law (2008) p.10

<sup>260</sup> Ibid p.9

<sup>261</sup> Ibid p.31-32

<sup>262</sup> Ibid

<sup>263</sup> Development as a Human Right: Legal, Political and Economic Dimensions (2010) p.xxxv

<sup>264</sup> Social Rights Jurisprudence: emerging trends in International and Comparative Law (2008) p.22

<sup>265</sup> Alston (2005) p.776-777

<sup>266</sup> Alston and Quinn (1987) p.165

<sup>267</sup> Ibid p.166

when there has been a breach of an obligation depends on the precise terms of the obligation, its interpretation and application, taking into account its object and purpose and the facts of the case.<sup>268</sup> In this regard, according to the positivist school, it can be debatable to argue that the ICESCR produces legal obligations of States to cooperate for the protection of economic and social rights.

Regarding the phrase ‘to the maximum of its available resources’, the CESCR notes that it “was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance.”<sup>269</sup> Nevertheless, if remedies are difficult to obtain under national jurisdiction, they are more difficult in the international area.

In regards to the Vienna Declaration, it connects extreme poverty and social exclusion as violations of human dignity. Some international lawyers might argue that a violation of human dignity is equivalent to a violation of human rights.<sup>270</sup> However, governments were reluctant to accept a legal responsibility in relation to poverty since it was not the message agreed of this Declaration.<sup>271</sup>

Another attempt was made in the context of the Declaration on Friendly Relations to elaborate on the nature of "the duty of States to co-operate with one another". Nevertheless there was little progress to define a consensus among States about the meaning of such a duty, and it was eventually only reiterated that States should cooperate.<sup>272</sup> In regards to the MDGs, according to many commentators they did not generate any legally binding obligations, contrary to the UDHR which was adopted on an agreed basis.<sup>273</sup>

The Declaration on the Right to Development shows more clarity about the importance of international cooperation, but it can be argued that as a declaration, it is not a

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<sup>268</sup> Draft Articles on States Responsibility, with commentaries, art 12 para 1

<sup>269</sup> CESCR General Comment No.3 para 13

<sup>270</sup> Alston (2005) p.787

<sup>271</sup> Ibid

<sup>272</sup> Alston and Quinn (1987) p.188

<sup>273</sup> Alston (2005) p.771

mandatory document and therefore it does not carry any legal obligation for any States, nor does it require judicial enforcement. Nevertheless, Amartya Sen notes that the “legitimacy and cogency of a human rights such as the Right to Development does not require full incorporation into legislation and judicial enforcement.”<sup>274</sup> Sen further believes that human rights are moral constructions which people have defined through what John Rawls called ‘public reasoning’ and therefore human rights must not be legalised per se.<sup>275</sup>

In this connection, Pogge argues that institutional cosmopolitanism, which considers each human being of equal value, provides the strongest moral argument in support of the obligation of affluent countries to provide resources that poor countries need to carry out their obligations to realise the right to development.<sup>276</sup> This idea is also supported by Stephen Marks, who considers that notwithstanding ambiguities and a reluctance to transfer the notion of justice from the domestic to the international system, elements of these obligations may be found in naturalist, contractarian and consequentialist theories of law, finding their strongest justification in institutional cosmopolitanism.<sup>277</sup>

#### 4.5 Concluding remarks

Different international human rights instruments refer to the importance of international cooperation for the protection of economic and social rights. In this regard, from a strictly positivist point of view, it can be argued that States may not have legal obligations towards this cooperation, first, due to the lack of strong language in the provisions, and second, based on the fact that in the preparatory works, States did not have the intention to be legally obliged to offer such cooperation. Nevertheless, based on the New Haven School, it can be argued that the law is broader and that the real focus should be the effectiveness of the implementation of the law, and the human rights conditions of the people in the field.

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<sup>274</sup> Development as a Human Right: Legal, Political and Economic Dimensions (2010) p.6

<sup>275</sup> Ibid p.xxvii

<sup>276</sup> Ibid p.85

<sup>277</sup> Ibid p.xxvii

Whatever the legal method employed, it can be accepted that States have moral obligations to improve the standards of living of everyone. Indeed, by now, States agree that the dignity of human beings is a basic value that every State should try to protect, regardless of considerations of nationality, race, colour, gender, etc.<sup>278</sup> In addition to the principle of non-discrimination, the principle of indivisibility of rights refers that the rights contained in the ICCPR and ICESCR are indivisible and interdependent.

In the case of Haiti, despite the different human rights instruments that refer to the protection of economic and social rights, the UN High Commissioner and other independent experts have called for application of the HRBA to reconstruction. Placing greater emphasis on human rights, and particularly on promoting and protecting economic and social rights is the only way to ensure sustainability of the reconstruction efforts and improvements in the lives of the Haitians. Moreover, human rights standards can provide a measure of progress of the international community's efforts to reconstruct the Haitian State.

The application of a HRBA is fundamental for the reconstruction and peace building of Haiti, since "by affirming that a development goal is an entitlement, human rights language empowers actors to make claims against duty-bearers and forces them to act against all types of capability-constraining obstacles, from lack of resources to discriminatory social practices."<sup>279</sup> Haitians in this case, must learn about their own rights and be empowered to claim them in front of the State. If not, they will continue seeing themselves as eternal humanitarian receivers and not as rights and duty holders.

In the case of the cholera outbreak, it can be argued that this justification could have an even stronger weight if the epidemic was considered partly lie with the international community. It will be relevant for further investigations to compare on one side, the implementation of a HRBA to the reconstruction and peace building of a country empowering local communities to claim their rights, and on the other side, the intent of

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<sup>278</sup> Cassese (2005) p.397-398

<sup>279</sup> De Schutter (2010) p.184



the international community to deny any responsibility regarding the spread of a disease.

It is also important to mention that the criticism towards HRBA is clearly manifested in the case of the reconstruction in Haiti. Indeed, a HRBA could be considered too prescriptive, and although the HRBA refers to the importance of participation, some may argue that such initiatives were designed with a top-down approach, and therefore that they are an imposition to the Haitian State.

## **5 CONCLUSIONS AND RECOMMENDATIONS**

In the case of Haiti, the reconstruction of the country has been emblematic. Although the country has received international support, the progress of human rights is greatly hampered by endemic poverty, illiteracy, corruption and various forms of discrimination that prevent large segments of the population from enjoying their human rights recognised in the domestic and international law. As a consequence of all these shortcomings, the majority of Haitians continue to lack access to their basic social and economic rights and they will continue to be dependent on humanitarian assistance for an indefinite period of time. This situation posed a continuous threat to individual rights and to national stability.

Moreover, Haiti has not ratified the ICESCR. Its ratification would mean an expression of values that the State is committed to protect and would strengthen the State's negotiation position with international donors. On the other hand, donor States can have an impact on Haiti's decision to ratify the ICESCR and they can promote the implementation of a HRBA into the reconstruction programs of the country.

At the international level, although there has been a long-date consensus about the universal protection of human rights and their implementation within reconstruction programs, the case of the reconstruction in Haiti reveals that in practice the economic and social rights have not been a priority for the programs of the international community. Indeed, based on the opinions of the OHCHR and other relevant international experts, there is a lack of a comprehensive medium and long-term perspective in the reconstruction process of Haiti and a lack of HRBA in the policies and programs implemented by the international community. Therefore, an understanding of a HRBA to development and the willingness to take appropriate

preventive action to avoid human rights violations is essential for the peace building efforts of the international community.<sup>280</sup>

In this regard, given that many potential conflicts and political tensions can be originated by economic and social rights violations, which are accentuated in vulnerable groups, preventive steps should be taken, particularly to protect people with special needs such as IDPs, women, children, older persons and persons with disabilities.

Moreover, since the protection of economic and social rights cannot solely be founded on law and legal enforcement mechanisms, the international cooperation and development assistance should focus on a culture of human rights and on the creation of national and local institutions capable of translating international human rights norms into reality.<sup>281</sup> Furthermore, ensuring governance responsibility and extending the protection of the rule of law should be key components in the reconstruction process, as should be a justice system reform in order to ensure that the judiciary is in a position to exercise its functions. Consequently, in the various phases of development and reconstruction process, a HRBA must be followed and each individual must be seen as the holder of rights that the State must guarantee, and not merely as the recipient of humanitarian assistance.

Nevertheless, some may argue that States are not legally bound to cooperate for the protection of economic and social rights due to the vagueness of the provisions contained in some core international human rights treaties and that on the contrary, the force of these quasi-obligations falls within soft-binding documents. Contrary to this assertion, the New Haven School highlights that international treaties are not the only source of international law, and on the contrary, the law is pluralistic. Although there is a long way to go for the effective implementation of a HRBA by the international community, it can certainly become a key element to avoid traditional views of the law. Moreover, indicators and benchmarks could make of the HRBA a concrete process by drawing more directly from IHRL.<sup>282</sup>

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<sup>280</sup> An Agenda for Peace, Report of the Secretary-General (1992) para 25

<sup>281</sup> Buergerthal, Shelton and Steward (2009) p.27-28

<sup>282</sup> Klasing, Moses and Satterthwaite (2011) p.9

Furthermore, according to the New Haven School, since human rights abuses result primarily from the failure to invoke and apply existing human rights laws, an appropriate response is to examine the decisional process to expose those features that prevent the effective application of the provisions which request international cooperation for the protection of economic and social rights. One can ask why treaties or their preparatory works need to be a main source of law, particularly in cases where they do not achieve the goal of the IHRL. This, as in the field of international relations, reveals the consequences of the pre-eminence of one school of thought over others. To this, Koh refers that “we should return to the post-World War II image of international law as a creative medium devoted to building a humane world public order.”<sup>283</sup>

In any case, according to the New Haven School, if socially constructed rules, principles, norms of behaviour, and shared beliefs provide States with an understanding of what is important and what are effective and/or legitimate means to be used, there is the possibility that the legal obligations of the States to cooperate for the protection of social and economic rights become widely accepted in the future.<sup>284</sup> In this regard, a development in the field of international human rights can be attributed to the fact that individuals around the world have progressively come to believe that the international community has an obligation to protect their human rights, be they civil and political rights or economic, social and cultural rights.<sup>285</sup> These expectations make it politically difficult for States to deny the existence of such obligations, which at the end facilitates the efforts for the promotion and protection of human rights at the international level.<sup>286</sup>

To summarize, in order to improve future reconstruction and development coordination, the international community can learn several lessons from the experience in Haiti. First, a lack of human rights obligations for the international community could become problematic in situations where the State, which is the primary guarantor of rights, is weakened by specific circumstances. Attention should therefore be paid in such

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<sup>283</sup> Koh (2007) p.572

<sup>284</sup> Berman (2007) p.324

<sup>285</sup> Buergenthal, Shelton and Steward (2009) p.27-28

<sup>286</sup> Ibid

circumstances to enhancing and improving the capacity of States to protect the rights of these communities, particularly when they are affected by a disaster.<sup>287</sup> Second, the success of the protection of human rights will depend on the adoption of a HRBA to the reconstruction of the country and the necessity of well-coordinated efforts among all the different actors of the international community. In this context, the notion of shared responsibility has to be further developed.<sup>288</sup>

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<sup>287</sup> Klasing, Moses and Satterthwaite (2011) p.19-20

<sup>288</sup> Universal Human Rights and Extraterritorial Obligations (2010) p.3

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## **ANNEX I**

**Extracts from the Constitution of the Republic of Haiti (Retrieved in:**

**<http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html>)**

Source: Embassy of Haiti in Washington, DC

### **PREAMBLE**

The Haitian people proclaim this constitution in order to:

Ensure their inalienable and imprescriptible rights to life, liberty and the pursuit of happiness; in conformity with the Act of Independence of 1804 and the Universal Declaration of the Rights of Man of 1948.

Constitute a socially just, economically free, and politically independent Haitian nation. Establish a strong and stable State, capable of protecting the country's values, traditions, sovereignty, independence and national vision.

Implant democracy, which entails ideological pluralism and political rotation and affirm the inviolable rights of the Haitian people.

Strengthen national unity by eliminating all discrimination between the urban and rural populations, by accepting the community of languages and culture and by recognizing the right to progress, information, education, health, employment and leisure for all citizens.

Ensure the separation and the harmonious distribution of the powers of the State at the service of the fundamental interests and priorities of the Nation.

Set up a system of government based on fundamental liberties, and the respect for human rights, social peace, economic equity, concerted action and participation of all

the people in major decisions affecting the life of a nation, through effective decentralization.

### **TITLE III: Basic Rights and Duties of the Citizen**

#### **CHAPTER II: Basic Rights**

##### **SECTION A: Right to life and Health**

**ARTICLE 19:** The State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of the Rights of Man.

**ARTICLE 22:** The State recognizes the right of every citizen to decent housing, education, food and social security.

**ARTICLE 23:** The State has the obligation to ensure for all citizens in all territorial divisions appropriate means to ensure protection, maintenance and restoration of their health by establishing hospitals, health centers and dispensaries.

##### **SECTION F: Education and Teaching**

**ARTICLE 32:** The State guarantees the right to education. It sees to the physical, intellectual, moral, professional, social and civic training of the population.

**ARTICLE 32-1:** Education is the responsibility of the State and its territorial divisions. They must make schooling available to all, free of charge, and ensure that public and private sector teachers are properly trained.

**ARTICLE 32-2:** The first responsibility of the State and its territorial divisions is education of the masses, which is the only way the country can be developed. The State shall encourage and facilitate private enterprise in this field.

**ARTICLE 32-3:** Primary schooling is compulsory under penalties to be prescribed by law. Classroom facilities and teaching materials shall be provided by the State to elementary school students free of charge.

**ARTICLE 32-4:** Agricultural, vocational, cooperative and technical training is a fundamental responsibility of the State and its communes.

**ARTICLE 32-5:** Preschool and maternal training, as well as non-formal education are encouraged.

**ARTICLE 32-6:** Higher education shall be open to all, on an equal bases, according to merit only.

**ARTICLE 32-7:** The State shall see to it that each territorial division, communal Section, commune or Department shall have the essential educational establishments adapted to the needs of their development, without however prejudicing the priorities assigned to agricultural, vocational, cooperative and technical training, which must be widely disseminated.

**ARTICLE 32-8:** The State guarantees that the handicapped and the gifted shall have the means to ensure their autonomy, education and independence.

**ARTICLE 32-9:** The State and its territorial divisions have the duty to make all necessary provisions to intensify the literacy campaign for the masses. they encourage all private initiatives to that end.

**ARTICLE 32-10:** Teachers are entitled to a fair salary.

**ARTICLE 33:** There shall be freedom of education at all levels. This freedom shall be exercised under the control of the State.



**ARTICLE 34:** Except where perpetrators of crimes are caught in the act, the premises of educational establishments are inviolable. No police forces may enter them except with the permission of the supervisors of those establishments.

**ARTICLE 34-1:** This provision does not apply when an educational establishment is used for the purposes.

## **SECTION G: Freedom to Work**

**ARTICLE 35:** Freedom to work is guaranteed. Every citizen has the obligation to engage in work of his choice to meet his own and his family's needs, and to cooperate with the State in the establishment of a social security system.

**ARTICLE 35-1:** Every employee of a private or public institution is entitled to a fair wage, to rest, to a paid annual vacation and to a bonus.

**ARTICLE 35-2:** The State guarantees workers equal working conditions and wages regardless of their sex, beliefs, opinions and marital status.

**ARTICLE 35-6:** The minimum age for gainful employment is set by law. Special laws govern the work of minors and servants.

## **SECTION H: Property**

**ARTICLE 36:** Private property is recognized and guaranteed. The law specifies the manner of acquiring and enjoying it, and the limits placed upon it.

**ARTICLE 36-1:** Expropriation for a public purpose may be effected only by payment or deposit ordered by a court in favour of the person entitled thereto, of fair compensation established in advance by an expert evaluation.

If the initial project is abandoned, the expropriation is cancelled. The property may not be subject to any speculation and must be restored to its original owner without any

reimbursement for the small holder. The expropriation measure is effective upon the start-up of the project.

**ARTICLE 36-2:** Nationalization and confiscation of goods, property and buildings for political reasons are forbidden.

No one may be deprived of his legitimate right of ownership other than by a final judgment by a court of ordinary law, except under an agrarian reform.

**ARTICLE 36-3:** Ownership also entails obligations. Uses of property cannot be contrary to the general interest.

**ARTICLE 36-4:** Landowners must cultivate, work, and protect their land, particularly against erosion. The penalty for failure to fulfil this obligation shall be prescribed by law.

**ARTICLE 36-5:** The right to own property does not extend to the coasts, springs, rivers, water courses, mines and quarries. They are part of the State's public domain.

**ARTICLE 36-6:** The law shall establish regulations governing freedom to prospect for and work mines, or bearing earths, and quarries, ensuring an equal share of the profits of such exploitation to the owner of the land and to the Haitian State or its concessionaires.

**ARTICLE 37:** The law shall set conditions for land division and aggregation in terms of a territorial management plan and the well-being of the communities concerned, within the framework of agrarian reform.

**ARTICLE 38:** Scientific, literary and artistic property is protected by law.

**ARTICLE 39:** The inhabitants of the Communal Sections have the right of pre-emption for the exploitation of the State's land in the private domain located in their locality.

## **SECTION I: Right to Information**

**ARTICLE 40:** The State has the obligation to publicize in the oral, written and televised press in the Creole and French languages all laws, orders, decrees, international agreements, treaties, and conventions on everything affecting the national life, except for information concerning national security.

**ARTICLE 64:** The state is obligated to establish for each Communal Section the structures required for social, economic, civic and cultural training of its population.

## **CHAPTER IV: The Judiciary**

**ARTICLE 173:** The Judicial Power shall be vested in the Supreme Court (Cour de Cassation), the Courts of Appeal, Courts of First Instance, Courts of Peace and special courts, whose number, composition, organization, operation and jurisdiction are set by law.

**ARTICLE 173-1:** Civil rights cases are exclusively the competence of the courts.

**ARTICLE 173-2:** No court and no jurisdiction in disputed matters may be established except by law. No special court may be established under any name whatever.

**ARTICLE 184:** The law determines the jurisdiction of the courts and tribunals, and regulates the manner of proceedings before them.

## **CHAPTER IV: Protection of Citizens**

**ARTICLE 207:** An office known as the OFFICE OF CITIZEN PROTECTION is established to protect all individuals against any form of abuse by the government.

**ARTICLE 207-1:** The office is directed by a citizen bearing the title of PROTECTOR OF CITIZENS. He is chosen by consensus of the President of the Republic, the

President of the Senate and the President of the House of Deputies. His term is seven (7) years and may not be renewed.

**ARTICLE 207-2:** His intervention on behalf of any complainant is without charge, whatever the court having jurisdiction might be.

**ARTICLE 207-3:** A law sets the conditions and regulations for the operation of the Office of Citizen Protection.

## **CHAPTER V: The University - The Academy - Culture**

**ARTICLE 208:** Higher education is free. It is provided by the University of the Haitian State (Université d'État d'Haiti), which is autonomous and by the superior public schools and the superior private schools accredited by the State.

**ARTICLE 209:** The State must finance the operation and development of the Haitian State University and the public superior schools. Their organization and their location must be planned from the perspective of regional development.

**ARTICLE 210:** The Establishment of research centers must be encouraged.

**ARTICLE 211:** Authorization for operation of universities and private superior schools is subject to the technical approval of the Council of the State University, to a majority of Haitian participation in the capital and faculty, and to the obligation to teach primarily in the official language of the country.

**ARTICLE 211-1:** The universities and the private and public superior schools provide academic and practical instruction adapted to the trends and requirements of national development.

**ARTICLE 212:** An organic law regulates the establishment, location and operation of university and public and private superior schools in the country.

**ARTICLE 213-1:** Other academies may be established.